

**COMMONWEALTH OF MASSACHUSETTS**

**BARNSTABLE, ss**

**SUPERIOR COURT DEPARTMENT  
BARNSTABLE  
Civil Action No.**

ROSEMARY THIBEAU,  
Plaintiff

v.

TOWN OF HARWICH,  
Defendants

**COMPLAINT and JURY DEMAND**

NOW comes the Plaintiff, Rosemary Thibeu, and, for her Complaint, says as follows:

**Parties**

1. The Plaintiff, Rosemary Thibeu, is an individual with a principal residence in Chatham, Barnstable County, Massachusetts.
2. The Defendant, Town of Harwich, is a Massachusetts municipality that maintains its offices at 732 Main Street, Harwich, Barnstable County, Massachusetts.

**Notice and Presentment**

3. Paragraphs 1 through 2 are realleged and are incorporated herein by reference.
4. On April 20, 2016 and March 31, 201, presentment of the subject claim was made upon the Town of Harwich via Certified Mail-Return Receipt Requested pursuant to M.G.L. Chapter 258, §4. A true and correct copy of the same, together with the Receipts, are attached hereto, collectively, as and marked "A".
5. The Defendant, within six (6) months after the presentment of the subject claim, has neither denied, reached final arbitration, settled or compromised the subject claim.



### **Facts and Negligence Claim**

6. On March 20, 2016, the Plaintiff, Rosemary Thibeau, was at the Town of Harwich's Treasure Chest, located at 273 Queen Anne Road, Harwich, Massachusetts.
7. On or about March 20, 2016, the Plaintiff Rosemary Thibeau while at the Treasure Chest was caused to fall and sustain injury as a result of one or more dangerous conditions.
8. The presence of the referenced dangerous conditions, as set forth above, was the result of the negligence and/or carelessness of the Defendant.
9. The presence of the referenced dangerous conditions, as set forth above, was known or should have been known to the Defendant.
10. As a direct and proximate result of the negligence of the Defendant, as set forth above, the Plaintiff sustained personal injuries, was caused to experience pain and suffering, was caused to incur expenses for medical and therapeutic care and treatment and was otherwise harmed and damaged.

WHEREFORE, Plaintiff Rosemary Thibeau, demands judgment in her favor and against the Defendant, Town of Harwich, in an amount to be determined by the Court, together with costs, interest and such other relief as the Court deems fair and reasonable.

### **PLAINTIFF DEMANDS A TRIAL BY JURY**

Respectfully submitted,  
Rosemary Thibeau  
By her attorneys,

/s/ Linda Slowe, Esq.  
/s/ John C. Manoog III  
Linda Slowe BBO No. 565033  
John C. Manoog III BBO No. 567481  
The Law Offices of John C. Manoog III  
450 South Street  
Hyannis, MA 02601  
(508)775-0088



# EXHIBIT A

**THE LAW OFFICES**  
*of*  
**JOHN C. MANOOG III**

*Hyannis Office*  
450 South Street  
Hyannis, MA 02601  
Phone: (508) 775-0088  
Fax: (508) 775-0176

*Please direct all correspondence to the Hyannis office.*

*Plymouth Office*  
4 Court Street, Suite 212  
Plymouth, MA 02360  
Phone: (508) 747-9888  
Fax: (508) 746-0668

April 20, 2016

***Via Certified Mail - Return Receipt Requested***  
***Article No. 7014 1200 0001 0357 0742***

Anita N. Doucette, Town Clerk  
Town of Harwich  
732 Main Street  
Harwich, MA 02645

**RE: Present of Claim Pursuant to G.L. c. 258, § 4**

**Our Client:** Rosemary Thibreau

**Date of Loss:** March 20, 2016

**Location of Accident:** The Treasure Chest, 273 Queen Anne Road, Harwich, MA

Dear Ms. Doucette:

Please be advised that this office is counsel to Rosemary Thibreau with respect to her claims for personal injuries sustained on or about March 20, 2016, while on the property of The Treasure Chest located at 273 Queen Anne Road, Harwich, Massachusetts. Specifically, Ms. Thibreau was injured after falling on your property. Please take this letter as my client, Rosemary Thibreau's, presentment of claim pursuant to M.G.L. c.258 §4.

A more detailed letter of presentment in accordance with G.L.c. 258, § 4, will be forwarded to your attention once we have had an opportunity to obtain medical records, billings, and other pertinent documents.

Thank you for your assistance in this matter.

Sincerely,

John C. Manoog III

JCM/kbw

cc: ***Via Certified Mail - Return Receipt Requested - Article No.: 7014 1200 0001 0357 0759***  
Town Counsel, Town of Harwich, Kopelman & Paige, P.C.  
101 Arch Street, 12<sup>th</sup> Floor  
Boston, MA 02110

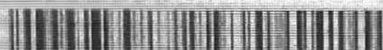


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1. Article Addressed to:

Anita N. Duxette, Town Clerk  
Town of Harwich  
732 Main Street  
Harwich MA 02645



9590 9403 0521 5173 2943 81

2. Article Number (Transfer from service label)

7034 1200 0001 0357 0742

PS Form 3811, April 2015 PSN 7530-01-000-9053

## COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *Kate Gaudet*
☐ Agent  
☒ Addressee

B. Received by (Printed Name)

KATE GAUDET

C. Date of Delivery

4-25-16

 D. Is delivery address different from item 1? ☐ Yes  
 If YES, enter delivery address below: ☒ No

3. Service Type

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☐ Insured Mail  
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Domestic Return Receipt

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1. Article Addressed to:

Kopelman & Paige PC.  
Town Counsel, Town of  
Harwich  
101 Arch Street 12th Floor  
Boston MA 02110



9590 9403 0521 5173 2943 74

2. Article Number (Transfer from service label)

## COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *L. Paige*
☐ Agent  
☒ Addressee

B. Received by (Printed Name)

C. Date of Delivery

 D. Is delivery address different from item 1? ☐ Yes  
 If YES, enter delivery address below: ☒ No

3. Service type

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☐ Signature Confirmation Restricted Delivery

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☐ Registered Mail™  
☐ Registered Mail Restricted Delivery  
☐ Return Receipt for Merchandise  
☐ Signature Confirmation™  
☐ Signature Confirmation Restricted Delivery

# EXHIBIT B



**THE LAW OFFICES**  
*of*  
**JOHN C. MANOOG III**

*Please direct all correspondence to the Hyannis office.*

*Hyannis Office*  
450 South Street  
Hyannis, MA 02601  
Phone: (508) 775-0088  
Fax: (508) 775-0176

*Plymouth Office*  
4 Court Street, Suite 212  
Plymouth, MA 02360  
Phone: (508) 747-9888  
Fax: (508) 746-0668

March 31, 2017

***Via Certified Mail - Return Receipt Requested***  
***Article No.: 7016 3010 000 8475 2855***  
***and First Class Mail***

Anita N. Doucette, Town Clerk  
Town of Harwich  
732 Main Street  
Harwich, MA 02645-2757

**RE: Presentment of Claim Pursuant to M.G.L. c. 258 §4**  
**Our Client:** Rosemary Thibeu  
**Date of Loss:** March 20, 2016  
**Location of Incident:** The Treasure Chest  
273 Queen Anne Road  
Harwich, MA

Dear Ms. Doucette:

As you are aware, this office represents Rosemary Thibeu relative to her claims for personal injuries sustained while at The Treasure Chest, which occurred on or about March 20, 2016. Please take this letter as my client, Ms. Thibeu's, formal demand for settlement and presentment of claim pursuant to M.G.L. c.258 §4. For your reference, I have enclosed Ms. Thibeu's medical records and bills.

**Summary of Facts:**

On or about March 20, 2016, Rosemary Thibeu was volunteering at The Treasure Chest, located at 273 Queen Anne Road, in Harwich, Massachusetts. As Ms. Thibeu was carrying a box of donations, she suddenly tripped over a plastic bin that has been left on the floor, directly in her path. Immediately after falling, she experienced severe upper right extremity pain. As a result, Ms. Thibeu suffered injuries to her shoulder and arm.

As a result of your insured's negligence including your insured's failure to exercise a proper degree of care, failure to ensure safe surroundings, failure to inspect and/or properly maintain the area which patrons regularly use, failure to ensure that the property was not dangerous, and failure to warn of the hazardous condition, Ms. Thibeu sustained personal injuries.

Anita N. Doucette, Town Clerk  
Town of Harwich  
March 31, 2017  
Page 2

**Summary of Medical Treatment:**

Harwich Fire & Rescue arrived on the scene immediately following the accident, where they found Ms. Thibeuau complaining of right arm pain. According to bystanders, Ms. Thibeuau hit her head on the concrete floor and had lost consciousness. Rescue personnel obtained baseline vitals and applied a cervical collar to Ms. Thibeuau. She was then transported to Cape Cod Hospital for evaluation of her injuries.

Upon arrival to the emergency department, Ms. Thibeuau was seen by attending physician, Carl Sigsbee, MD. Ms. Thibeuau underwent a thorough examination and the doctor noted laceration and contusion to left occipital and upper right arm tenderness. Dr. Sigsbee ordered a head CT and shoulder x-rays. Fortunately, no abnormalities or evidence of fracture or dislocation were noted. Ms. Thibeuau was discharged with instructions to ice affected areas, take Motrin for pain, and to follow up with her primary care physician.

Ms. Thibeuau saw her primary care doctor, Mita Gupta, MD, on March 29, 2016, as a follow up to her ER visit. Ms. Thibeuau complained of continued pain to her right shoulder/arm since her fall a week ago. Upon examination, Dr. Gupta noted tenderness anteriorly over right shoulder and very restricted limited range of motion. The doctor diagnosed high suspicion of rotator cuff tear and referred Ms. Thibeuau to orthopedics. She was also given a prescription for Hydrocodone to help with pain.

On April 1, 2016, Ms. Thibeuau returned to Cape Cod Hospital's emergency department and complained of right shoulder pain. She informed Dr. Peter Pillitteri that she felt something "pop" when she was bending down. The doctor noted that Ms. Thibeuau was seen in the ER approximately two weeks prior for right shoulder pain due to a fall. An examination revealed right shoulder deformity and tenderness, and limited active/passive ranges of motion. Dr. Pillitteri ordered right shoulder x-rays, EKG, labs, and an IV started. Her radiographs showed right anterior-inferior shoulder dislocation, no definite glenoid or humeral head fractures identified. Dr. Pillitteri then consulted with Dr. Brian Najarian of orthopedics. Ms. Thibeuau was diagnosed with right shoulder dislocation with rotator cuff tear and shoulder instability. She underwent two unsuccessful attempts at reduction and was then placed under procedural sedation followed by an ortho joint reduction. The shoulder was reduced successfully but subluxed out of anatomic alignment. A sling was applied to her right arm post reduction. Ms. Thibeuau was given a prescription for Oxycodone and home care instructions. She was further instructed to follow up with her primary care doctor and Cape Cod Orthopedics.

As instructed, Ms. Thibeuau went to Cape Cod Orthopedics on April 5, 2016, and was seen by Physician Assistant Donovan Driscoll for an initial consultation. Mr. Driscoll noted that Ms. Thibeuau was right-hand dominant and after a fall on March 20, 2016, she developed right



Anita N. Doucette, Town Clerk  
Town of Harwich  
March 31, 2017  
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shoulder anterior-inferior dislocation. Ms. Thibeau reported considerable pain at rest and limited range of motion. Mr. Driscoll performed a thorough right shoulder examination which showed tenderness to palpation, bruised/ecchymotic, anterior apprehension test positive, cross body test positive, and strength tests abnormal. There was concern for massive rotator cuff tearing and an MRA with intra-articular injection was ordered. Ms. Thibeau was advised on conservative home care and continued use of sling as tolerated. Ms. Thibeau was instructed to follow up after her MRA.

Ms. Thibeau went to her primary care office on April 12, 2016, and was seen by Nurse Practitioner Janice Harrison. She complained of ongoing shoulder pain and depression. Ms. Thibeau informed Ms. Harrison that following her fall, she suffered a right shoulder dislocation and went to the emergency room. She reported that twice they tried to put her shoulder back in place without anesthesia which was extremely painful and caused Ms. Thibeau much distress. She was then placed under anesthesia and her shoulder was reduced. Ms. Harrison discussed with Ms. Thibeau her trauma and depression caused by her injury and recommended talk therapy. Ms. Harrison noted that Ms. Thibeau was being followed by orthopedics for her shoulder symptoms. Ms. Thibeau was instructed to return in two weeks for a follow-up appointment with Dr. Gupta.

Ms. Thibeau presented to Cape Cod Hospital Radiology on April 21, 2016, for MRI arthrogram of the right shoulder as ordered by Dr. Affonso. Findings showed:

1. Focal full-thickness tear of the supraspinatus tendon with a tendon gap that measured approximately 9 x 10mm. There was extension of contrast from the intra-articular region into the subacromial/subdeltoid bursa. No atrophy or fat infiltration in the supraspinatus muscle.
2. Low-grade partial-thickness tear at the articular surface fibers of the subscapularis tendon measures approximately 7 x 11mm. No atrophy or fat infiltration in the infraspinatus muscle.
3. Superficial fraying of the superior labrum. Complex degenerative tear at the anteroinferior labrum.

On April 22, 2016, Ms. Thibeau saw Mr. Driscoll for a review of her MRA. After reviewing her MRA, Mr. Driscoll diagnosed complete tear of right rotator cuff and reviewed her treatment options. He recommended surgical management with arthroscopic rotator cuff repair, debridement, and decompression. Mr. Driscoll discussed the risks, benefits, and alternatives to surgery with Ms. Thibeau and she was ready to proceed with surgery.

Ms. Thibeau saw Dr. Gupta on April 26, 2016, for a follow-up appointment. Ms. Thibeau reported that she still had much anxiety since her dislocation and that she was scheduled for arthroscopic surgery next month. Dr. Gupta reassured Ms. Thibeau that her anxiety would subside. The doctor noted that Ms. Thibeau continued to be followed by Dr. Affonso for her shoulder.



Anita N. Doucette, Town Clerk  
Town of Harwich  
March 31, 2017  
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On May 19, 2016, Ms. Thibeu presented to Cape Cod Hospital for arthroscopic double-row rotator cuff repair of supraspinatus and infraspinatus. Dr. Affonso discussed the risks, benefits, and alternatives to surgery. Ms. Thibeu provided written consent and was brought to the operating room and placed under anesthesia. Diagnostic arthroscopy was established through posterior and anterior portals and there was minimal, if any, evidence of osteoarthritis. A large full-thickness supraspinatus and infraspinatus tear was gently debrided. Then a 4-anchor, double-row rotator cuff repair of the entire supraspinatus and infraspinatus was performed with two additional FiberLink sutures placed anteriorly and posteriorly to the medial row. Portals were closed and sterile dressings were applied. Ms. Thibeu was brought to PACU in stable condition. Ms. Thibeu was later discharged with post-procedure instructions and to follow up with orthopedics in a few weeks.

Ms. Thibeu saw Donovan Driscoll, PAC on June 1, 2016, for a post-op visit. Upon examination, Mr. Driscoll noted that her range of motion was acceptable at that point post-operatively. Her wound was healing well and sutures were removed. Ms. Thibeu was instructed on continued wound care, to advance activities as tolerated, and to begin physical therapy. Ms. Thibeu was instructed to return in four weeks for re-evaluation.

Ms. Thibeu presented to Cape Cod Hospital Rehabilitation on June 6, 2016, for a physical therapy evaluation and plan of care. The therapist noted that Ms. Thibeu was post-op rotator cuff repair and had limitations and impairments with range of motion and strength. The therapist developed a initial 4-6 week treatment plan for Ms. Thibeu which was to include manual techniques, therapeutic exercise, modalities, functional training, and a home exercise program.

On June 20, 2016, Ms. Thibeu returned for a follow-up appointment with Mr. Driscoll. After a thorough examination, Mr. Driscoll noted that Ms. Thibeu was making steady progress and improving with physical therapy. She was instructed to continue with physical therapy and to return in 6-8 weeks for an interval check up.

When Ms. Thibeu returned to Cape Cod Orthopaedics on August 1, 2016, she reported to Mr. Driscoll that she had occasional pain and could tolerate some weight. Mr. Driscoll noted that her range of motion was acceptable at that point and encouraged advancing activities as tolerated. Ms. Thibeu was advised on continued wound care and to return in six weeks.

On September 27, 2016, Ms. Thibeu was seen by Dr. Affonso at Cape Cod Orthopaedics. It was noted that Ms. Thibeu continued to improve and continued to have occasional pain. Upon examination, Dr. Affonso noted good active range of motion to involved region, neurovas intact, and no swelling. The doctor advised continued range of motion to achieve full range and resume normal activities.

At this time, it appears that Ms. Thibeu has reached maximum medical improvement. To date, her medical expenses are as follows:



Anita N. Doucette, Town Clerk  
Town of Harwich  
March 31, 2017  
Page 5

**Summary of Medical Expenses:**

**Provider:**

	<b><u>Charge:</u></b>
Town of Harwich (03/20/16)	\$ 2,299.76
Cape Cod Hospital (03/20/16-07/28/16)	\$ 32,049.02
Cape Cod ER Physicians (03/20/16-04/14/16)	\$ 3,136.00
Partners Healthcare - Radiology (03/20/16-04/21/16)	\$ 1,564.00
Cape Cod Anesthesia (05/19/16)	\$ 2,692.00
Cape Cod Orthopaedics (04/05/16-09/27/16)	\$ 8,246.00
Mita Gupta, MD (03/29/16-04/26/16)	\$ <u>654.78</u>

**Total:** \$ 50,236.56

In addition to her medical treatment and expenses, Ms. Thibeuau suffered additional losses as a result of this accident. In the months following the accident, Ms. Thibeuau suffered from ongoing shoulder pain, which greatly affected her daily activities and sleeping comfortably through the night. She was further traumatized by the extremely painful shoulder dislocation and reduction. Ms. Thibeuau was frustrated and discouraged by the limitations this accident put on her life.

Based on Ms. Thibeuau's personal injuries, pain and suffering, her medical treatment and expenses, continuing pain, and ongoing medical needs, I hereby demand the sum of Two Hundred and Fifty Thousand Dollars (\$250,000.00), on behalf of Ms. Thibeuau.

Please contact me once you have had an opportunity to review the enclosed. In any event, please respond to this presentment letter within the time set forth in M.G.L. c.258, §4.

Thank you for your anticipated cooperation in this matter. I look forward to speaking with you soon.

Sincerely,



John C. Manooch, III

JCM/sbr

Enclosures as stated.

cc: *Via Certified Mail - Return Receipt Requested Article No.: 7016 3010 000 8475 2862*  
Kopelman & Paige, PC, Town Counsel  
101 Arch Street, Suite 905, Boston, MA 02110-1130



Anita N. Doucette, Town Clerk  
Town of Harwich  
March 31, 2017  
Page 6

*Via email: christine.becotte@cabotrisk.com*  
Ms. Christine Becotte, MILA Member Services  
15 Cabot Road, Woburn, MA 01801-1003



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Kopelman & Paige, PC  
101 Arch Street, Suite 905  
Boston, MA 02110-1130



9590 9402 1407 5829 1358 33

2. Article Number (Transfer from service label)

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PS Form 3811, July 2015 PSN 7530-02-000-9053

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A. Signature

X *L. Paige*

☐ Agent  
☐ Addressee

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If YES, enter delivery address below: ☐ No



3. Service Type

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- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
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- ☐ Priority Mail Express®
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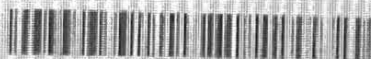
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Anita N. Doucette, Town Clerk  
Town of Harwich  
732 Main Street  
Harwich, MA 02645-2757



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2. Article Number (Transfer from service label)

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A. Signature

X *Paula West*

☐ Agent  
☐ Addressee

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PAULA WEST

C. Date of Delivery

4-3-15

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